

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Terri A. Bollman; Tracy A. Cross; David J. & Rhona J.
Paluch Trust; Jay W. Greer; Patricia L. Greer

NOTICE OF INTENT TO APPEAR: Marilyn W. Grosfield; Theorem
1895, LLC

CASE 43B-0733-R-2022

43B 179991-00

43B 179992-00

43B 179993-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 43B 179991-00, 43B 179992-00 and 43B 179993-00 appeared in the Preliminary Decree with issue remarks. Jon A. Grosfield and Marilyn W. Grosfield each filed a notice of intent to appear for each claim. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On January 12, 2023 Jon Grosfield's Notice Of Conditional Withdrawal Of NOIAS was filed conditioned on the claimants' proposed changes which were not yet filed. On January 17, 2023 Claimants' Statement Of Resolution Of Issue Remarks was filed. On January 17, 2023 the Statement From NOIA Party Marilyn Grosfield was filed stating she did not agree with the claimants' proposed resolution for claims 43B 179992-00 and 43B 179993-00.

The February 22, 2023 Court Minutes, Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA, and Order Updating Caption And Mailing List required claimants to telephone the Bozeman Regional Office, Montana Department of Natural Resources and Conservation ["DNRC"], to initiate the process to resolve the point of diversion issue remarks on claims 43B 179992-00 and 43B 179993-00. On April 27, 2023 Claimants' Notice Of Filing Of Supporting Documents was filed including multiple marked aerial photograph and topographic map copies. On May 10, 2023 the DNRC Memorandum was filed with recommendations. On June 16, 2023 Theorem 1895, LLC'S Conditional Withdrawal of NOIAs was filed. On June 21, 2023 the Statement From NOIA Party Marilyn Grosfield Conditionally Withdrawing NOIAs was filed, noting a typographical error in the section number in the legal description recommended in the DNRC Memorandum. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as

provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 43B 179991, the Preliminary Decree includes the following issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 32.00 GPM PER ACRE.

The Preliminary Decree states this is a flood irrigation claim for 35.00 acres with a flow rate of 2.50 CFS. The flow rate should be 1.33 CFS. The flow rate issue remark should be removed as addressed and resolved.

2. For each of claims 43B 179992-00 and 43B 179993-00, the Preliminary Decree includes the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

For both claims, the Preliminary Decree states that the legal description for point of diversion #1 and point of diversion #2 is the NWNWNW section 6, T1N, R14E, SWEET GRASS. For both claims, the legal description for both points of diversion should be the SWSWSW section 31, T2N, R14E, SWEET GRASS. The point of diversion issue remarks should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the parties and the DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary

Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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Jay W. Greer
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 179991-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

TRACY A CROSS
3410 BLUEFIELD PL
FORT WAYNE, IN 46816

TERRI A BOLLMAN
%TRACY A CROSS
3410 BLUEFIELD PL
FORT WAYNE, IN 46816

PALUCH, DAVID J & RHONA J TRUST
654 MORNINGSIDE DR
GRAND BLANC, MI 48439

JAY W GREER
14508 CAMERON CT
GRAND HAVEN, MI 49417 9376

PATRICIA L GREER
14508 CAMERON CT
GRAND HAVEN, MI 49417 9376

Priority Date: JULY 20, 1909

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.33 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 35.00

Source Name: SWAMP CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNE	25	2N	13E	SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Ditch Name:	BELEY DITCH					
2		SENESE	16	2N	13E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1
Diversion Means: HEADGATE
Ditch Name: HANNAH RUDD DIVERSION DITCH
Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		NW	6	1N	14E	SWEET GRASS
2	10.00		W2SWNE	6	1N	14E	SWEET GRASS
Total:	<u>35.00</u>						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 179992-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

TRACY A CROSS
3410 BLUEFIELD PL
FORT WAYNE, IN 46816

TERRI A BOLLMAN
%TRACY A CROSS
3410 BLUEFIELD PL
FORT WAYNE, IN 46816

PALUCH, DAVID J & RHONA J TRUST
654 MORNINGSIDE DR
GRAND BLANC, MI 48439

JAY W GREER
14508 CAMERON CT
GRAND HAVEN, MI 49417 9376

PATRICIA L GREER
14508 CAMERON CT
GRAND HAVEN, MI 49417 9376

Priority Date: MAY 1, 1898

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.33 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 35.00

Source Name: WHITETAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	31	2N	14E	SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
2		SWSWSW	31	2N	14E	SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1					

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		NW	6	1N	14E	SWEET GRASS
2	10.00		NE	6	1N	14E	SWEET GRASS
Total:	<u>35.00</u>						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 179993-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

TRACY A CROSS
3410 BLUEFIELD PL
FORT WAYNE, IN 46816

TERRI A BOLLMAN
%TRACY A CROSS
3410 BLUEFIELD PL
FORT WAYNE, IN 46816

PALUCH, DAVID J & RHONA J TRUST
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JAY W GREER
14508 CAMERON CT
GRAND HAVEN, MI 49417 9376

PATRICIA L GREER
14508 CAMERON CT
GRAND HAVEN, MI 49417 9376

Priority Date: DECEMBER 31, 1906

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 35.00

Source Name: WHITETAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	31	2N	14E	SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
2		SWSWSW	31	2N	14E	SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1					

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		W2SWNE	6	1N	14E	SWEET GRASS
2	25.00		NW	6	1N	14E	SWEET GRASS
Total:	35.00						